



Appellant-defendant Levi K. Moore appeals his conviction for Battery,<sup>1</sup> a class A misdemeanor, claiming that the conviction must be reversed because the trial court improperly excluded evidence of the victim's reputation. Moore also contends that the evidence was insufficient to support the conviction and that the State failed to adequately rebut his self-defense claim. Finding no error, we affirm the judgment of the trial court.

### FACTS

On October 25, 2007, John Kenworthy arrived at his Greene County residence at approximately 5:30 p.m. At some point, Kenworthy heard yelling and screaming coming from the home of one of his neighbors. As Kenworthy ran toward the house, he noticed that his neighbor, Jeremiah Moore, was cursing and “ranting.” Tr. p. 132. Jeremiah was upset because Kenworthy's dogs had escaped from their pen. As the two headed toward the dog pen, Kenworthy saw Jeremiah's brother, Levi Moore—the defendant herein—speed towards him in his vehicle. After Moore skidded to a stop, Jeremiah hit Kenworthy in the head. Kenworthy fell to the ground and the Moore brothers immediately jumped on top of him and began punching and kicking him.

Kenworthy managed to escape and began to run towards the house. The Moores chased him, and Kenworthy eventually grabbed a shovel to defend himself. However, Kenworthy put the shovel down, believing that the situation would escalate if he hit anyone with it. Shortly thereafter, Jordan Moore—another brother—arrived at the scene on his motorcycle. Jordan jumped from the motorcycle and lunged toward Kenworthy. In the meantime, Jeremiah picked up a shovel and struck Kenworthy in the head with it.

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<sup>1</sup> Ind. Code § 35-42-2-1.

Jeremiah choked Kenworthy and Kenworthy bit him and bent back his fingers. The Moores then jumped on Kenworthy and continued kicking and hitting him. When another neighbor arrived, the Moores fled the scene. As a result of the incident, Kenworthy suffered a laceration to his head, abrasions on his arms, and cuts and bruises on other parts of his body.

Kenworthy called the police and several officers arrived at approximately 10:30 p.m. The police officers secured the Moores' residence and Moore was ultimately charged with battery as a class A misdemeanor.

At a jury trial that commenced on June 3, 2008, Brandy Kohlman and Angela Cliver—two of Kenworthy's neighbors—testified that they watched as Moore hit and kick Kenworthy. Moore testified that he went to Kenworthy's residence to break up the fight. Moore also testified that he "walked away" after Kenworthy hit him with a shovel, and claimed that he never hit Kenworthy. Tr. p. 410-11.

At some point during Moore's case-in-chief, he called Elaine Moffett to testify and attempted to ask her specific questions about the problems she had experienced with Kenworthy and his dogs when they had been neighbors. The prosecutor objected, and the trial court excused the jury. During a hearing that was conducted outside the presence of the jury, Moore's counsel informed the trial court that she desired to present evidence of Kenworthy's reputation and "the character for how he handles dogs in the neighborhoods." Tr. p. 392. In response, the trial court stated that it would not allow testimony of specific acts, but it would permit evidence as to Moore's reputation. Although Moore made an offer of proof, he did not ask Moffett about Kenworthy's

reputation in the community. Rather, Moffett testified about issues that she had had with Kenworthy and his dogs when they were neighbors.

Following the presentation of evidence, Moore was found guilty as charged. Thereafter, the trial court sentenced Moore to eleven months of incarceration in the Greene County jail. Moore now appeals.

## DISCUSSION AND DECISION

### I. Exclusion of Evidence

Moore claims that the trial court erred in excluding Moffett's testimony regarding her experiences with Kenworthy and his dogs. Specifically, Moore contends that Moffett's testimony should have been admitted at trial because it "related to Kenworthy's reputation for attempting to instigate fights with his neighbors." Appellant's Br. p. 6.

We initially observe that the trial court has broad discretion in ruling on the admissibility of evidence. Scott v. State, 855 N.E.2d 1068, 1071 (Ind. Ct. App. 2006). Accordingly, we will reverse a ruling with regard to the admissibility of evidence only when the trial court has abused its discretion. Id. An abuse of discretion occurs when a trial court's decision is clearly against the logic and effect of the facts and circumstances before the court. Id. Moreover, a claim of error in the exclusion or admission of evidence will not prevail on appeal unless the error affects the substantial rights of the moving party. Gant v. State, 694 N.E.2d 1125, 1129 (Ind. 1998).

We also observe that character evidence of a victim, in the context of a claim of self-defense, is only admissible for limited purposes. Brand v. State, 766 N.E.2d 772, 778 (Ind. Ct. App. 2002). Moreover, when offering alleged specific bad acts to prove a

victim's violent character, the defendant is required to testify that he knew of the specific bad acts in question. Holder v. State, 571 N.E.2d 1250, 1254 (Ind. 1991).

As noted above, Moore's counsel questioned Moffett whether "there were problems" when she lived next door to Moore. Tr. p. 390. After the State objected, the trial court dismissed the jury and informed defense counsel that the introduction of reputation evidence would be allowed, but that it would not allow the admission of specific acts. Id. at 393, 396. Although Moore's counsel made an offer of proof, Moffett was not asked whether Kenworthy had any particular reputation in the community. Instead, Moffett offered testimony about issues that she had had with Kenworthy and his dogs years ago.

There was no testimony from Moore or his brothers indicating that they were aware of any of the events that Moffett described. Thus, Moore failed to establish a proper foundation for the evidence that he sought to admit at trial, and the trial court correctly determined that Moffett's proposed testimony was not admissible as reputation evidence.

Although Moore asserts that the trial court's refusal to allow the evidence deprived him of the opportunity to "show that Kenworthy was the aggressor in the incident," appellant's br. p. 7, he concedes that "Jeremiah, not Levi, instigated the first violent incident." Id. at 6. Indeed, Jeremiah admitted at trial that he punched Kenworthy first, hit him in the head with the shovel, and kicked him. Tr. p. 369. Therefore, even assuming solely for argument's sake that Moore did establish a foundation for the admission of the proposed reputation evidence, any error in the exclusion of such

evidence was harmless in light of the overwhelming evidence—which we discuss in detail below—establishing that Moore did not act in self-defense and willingly participated in the beating of Kenworthy. See Jackson v. State, 712 N.E.2d 986, 988-89 (Ind. 1999) (observing that the erroneous admission of character evidence constitutes harmless error when there is overwhelming evidence that negates a claim of self-defense).

## II. Sufficiency of the Evidence and Self-Defense

Moore argues that the evidence is insufficient to support his conviction and that the State failed to negate his claim of self-defense. Specifically, Moore argues that the State failed to prove that he kicked and beat Kenworthy. Alternatively, Moore contends that even if the jury did find that he participated in the beating, the evidence established that “he did so in defense of himself, and the State failed to disprove his self-defense claim.” Appellant’s Br. p. 5.

When addressing a challenge to the sufficiency of the evidence, we neither reweigh the evidence nor judge the credibility of witnesses. McHenry v. State, 820 N.E.2d 124, 126 (Ind. 2005). Moreover, we respect the factfinder’s “exclusive province to weigh conflicting evidence.” Id. If there is sufficient evidence of probative value to support the conclusion of the trier of fact, then the verdict will not be disturbed. Id.

We also note that the standard of review for a challenge to the sufficiency of the evidence to rebut a claim of self-defense is the same as the standard for any sufficiency of the evidence claim. Hobson v. State, 795 N.E.2d 1118, 1121 (Ind. Ct. App. 2003). A valid claim of defense of oneself or another person is a legal justification for an otherwise

criminal act. Ind. Code § 35-41-3-2(a). A person is justified in using reasonable force against another person to protect himself from what he reasonably believes to be the imminent use of unlawful force. Id. To prevail on a claim of self-defense, the defendant must show that he “(1) was in a place where he had a right to be; (2) did not provoke, instigate, or participate willingly in the violence; and (3) had a reasonable fear of death or great bodily harm.” Hobson, 795 N.E.2d 1118, 1121 (Ind. Ct. App. 2003). When a claim of self-defense is raised and finds support in the evidence, the State has the burden of negating at least one of the necessary elements. Id.

In this case, the State alleged—and was required to prove—that Moore knowingly or intentionally kicked Kenworthy, resulting in bodily injury to Kenworthy. Appellant’s App. p. 11; I.C. § 35-42-2-1. At trial, Kenworthy testified that Moore willingly participated in the beating. Tr. p. 140-41. More specifically, the evidence demonstrated that after Jeremiah hit Kenworthy in the head with a shovel, Moore joined in and began to punch and kick Kenworthy. Id. at 149-52. Additionally, Kohlman and Cliver witnessed Moore’s participation in the beating. Id. at 209-11. The evidence was uncontested that Kenworthy sustained bodily injuries during the attack as a result of the blows that Moore and his brothers had inflicted. Id. at 159-64, 256-60, 275-78, 282-84. This was sufficient evidence to support Moore’s battery conviction.

Finally, we note that Moore makes the alternative argument that even if the jury chose to disbelieve his testimony that he never touched Kenworthy, the conviction must be set aside because the evidence established that he acted in self-defense and he struck

Kenworthy only because “he had a reasonable fear of great bodily harm and, in fact, did suffer harm.” Appellant’s Br. p. 6 (emphasis in original).

Notwithstanding this claim, the evidence—other than Moore’s self-serving testimony—established that Moore kicked and punched Kenworthy and did not act in self-defense. Tr. p. 140-41, 147,149-52, 205-06, 208-13. In essence, Moore’s request that we consider his own testimony and reject that of the other witnesses is simply a request to reweigh the evidence, which we must decline. Lykins v. State, 726 N.E.2d 1265, 1271 (Ind. Ct. App. 2000). From the evidence presented, we conclude that the jury properly rejected Moore’s self-defense claim and find that the evidence was sufficient to support the conviction for battery.

The judgment of the trial court is affirmed.

NAJAM, J., and KIRSCH, J., concur.